



Investors Trust Mortgage Loan Asset-Backed Certificates, Series 2004-WMC5 v. *Freddie Murray, as Personal Representative of the Estate and Lilia Murray* (the “Ancillary Probate Action”). Pursuant to Sections 1452 of Title 28 of the United States Code, Wells Fargo removes this case to the United States District Court for the Southern District of Texas, McAllen Division, the Judicial District and Division in which this action is pending.

2. Wells Fargo is a secured creditor of the probate estate of Antonio Murray, deceased (“Probate Estate”) as the owner and holder of a Note secured by a home equity lien on the real property commonly known as 3205 San Nicolas Street, Mission, Texas 78572 (“Property”), and more particularly described as follows:

LOT THIRTEEN (13), CAPISTRANO, AN ADDITION TO THE CITY OF MISSION, HIDALGO COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 29, PAGE 151, MAP RECORDS, HIDALGO COUNTY, TEXAS, REFERENCE TO WHICH IS HERE MADE FOR ALL PURPOSES.

To establish its interest against the Property of the Probate Estate, Wells Fargo filed and served a claim in the underlying probate case, Cause Number P-34,582-A in the Probate Court of Hidalgo County, Texas. Defendant Freddie Murray—son of Antonio Murray and the personal representative of the Estate at that time—rejected the claim. As a result of the rejection, Wells Fargo was forced to initiate this suit, as an ancillary proceeding to the underlying probate matter, seeking to establish its claim against the Probate Estate’s interest in the Property and seeking an order of foreclosure against both the Probate Estate’s interest and the interest of Antonio Murray’s surviving spouse, Lilia Murray. (*See Exhibit B-1 First Amended Petition.*)

3. After the filing of this suit, Freddie Murray was removed as representative of the Estate and Lilia Murray was appointed temporary administrator pending the will contest. Freddie Murray remains a defendant as he is subject to liability for costs once Wells Fargo’s

claim is established against the Estate interest in the Property.

4. On or around October 22, 2013 Lilia Murray filed for Chapter 11 bankruptcy protection in her individual capacity. In her filings she has listed 3205 San Nicolas Street, Mission, Texas 78572 as her homestead. (*See In re Lilia Murray*, Civil Action No. 13-70547, ECF Docket No. 18, Schedule A.) Upon removal, this case should be docketed as an adversary proceeding related to Lilia Murray's bankruptcy—cause number 13-70547 in this District. *See* 28 U.S.C. § 157(a) and Southern District of Texas General Order 2012-6 (May 24, 2012.)

5. This removal is timely under Federal Rule of Bankruptcy Procedure 9027(a)(2) because the automatic stay remains in effect as to Wells Fargo's ability to pursue its claims against Lilia Murray. FED. R. BANK. P. 9027(a)(2).

6. Attached hereto as Exhibit A is a copy of the Docket Sheet from the Ancillary Probate Action filed by Wells Fargo, and true and correct copies of all pleadings filed in the Ancillary Probate Action are attached within the contents of Exhibit B.

**BASIS FOR REMOVAL:**  
**THE ANCILLARY PROBATE ACTION IS A CORE PROCEEDING**

7. Removal of the Ancillary Probate Action to this Court is proper pursuant to 28 U.S.C. Sections 1334 and 1452 because the Ancillary Probate Action is a suit to establish a lien and to foreclose on Lilia Murray's homestead.

8. This Court has jurisdiction to hear civil proceedings that are "related to" Lilia Murray's Chapter 11 case. *Cano v. GMAC Mortg. Corp. (In re Cano)*, 410 B.R. 506, 544 (Bankr. S.D. Tex. 2009)(citing *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1022 (5th Cir. 1999) and noting that a "matter is 'related to' a case under title 11 if the adversary proceeding's outcome may 'both (1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate.'") Additionally, a proceeding is related to the

bankruptcy proceeding is “the outcome of that proceeding could *conceivably* have any effect on the estate being administered in bankruptcy.” *Id.* (citing *Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987)).

9. Here, the Ancillary Probate Action seeks to establish a claim against 3205 San Nicolas Street, Mission, Texas 78572—real property which the debtor, Lilia Murray, has at least a fifty percent interest in as the surviving spouse of Antonio Murray and is involved in contested litigation with Freddie Murray to establish a greater interest. The Ancillary Probate Action also seeks a court order, as required by Texas Constitution Article XVI section 50(a)(6), allowing Wells Fargo to foreclose on Lilia Murray’s homestead. Moreover, Lilia Murray may be subject to further liability above and beyond the amount of the debt owed as successor administrator to Freddie Murray once Wells Fargo’s claim is established against the Property. *See* TEX. PROBATE CODE § 355.052. Accordingly, the outcome of this proceeding will conceivably have an effect on Lilia Murray’s bankruptcy estate. The Ancillary Probate Action is a core proceeding that this Court has jurisdiction to hear.

### **VENUE**

10. Venue for removal is proper in this District and Division under 28 U.S.C. Section 1441(a) because this district and division embrace the Probate Court of Hidalgo County, Texas, the forum in which the removed action was pending.

### **NOTICE**

11. Concurrently with the filing of this Notice, Defendant will file a copy of this Notice of Removal with the Clerk of Probate Court of Hidalgo County, Texas.

Respectfully submitted,

By: /s/ Mark D. Cronenwett

**MARK D. CRONENWETT**

Texas Bar No. 00787303

[mcronenwett@mwzmlaw.com](mailto:mcronenwett@mwzmlaw.com)

**DUSTIN C. GEORGE**

Texas Bar No. 24065287

[dgeorge@mwzmlaw.com](mailto:dgeorge@mwzmlaw.com)

**MACKIE WOLF ZIENTZ & MANN, P. C.**

14160 North Dallas Parkway, Suite 900

Dallas, TX 75254

Telephone: (214) 635-2650

Facsimile: (214) 635-2686

*Attorneys for Plaintiff Wells Fargo*

**LIST OF ALL KNOWN COUNSEL OF RECORD**

For Plaintiff Wells Fargo:

Mark D. Cronenwett  
Texas Bar No. 00787303  
Dustin C. George  
Texas Bar No. 24065287  
Mackie Wolf Zientz & Mann, P. C.  
14160 North Dallas Parkway, Suite 900  
Dallas, TX 75254  
(214) 635-2650  
(214) 635-2686 (Fax)

For Defendant Lilia Murray:

Antonio Martinez, Jr.  
Texas Bar No. 24007607  
409 W. Nolana Ave, Ste 4  
McAllen, Texas 78504  
(956) 789-5393  
*(Current counsel in underlying probate matter)*

Aurelio Leo Lara  
4124 N. 23<sup>rd</sup> Street, Suite 1  
McAllen, Texas 78504  
(956) 630-2999  
(956) 618-5527 (Fax)  
*(Prior counsel who answered in ancillary probate matter  
but withdrew in underlying probate matter)*

For Defendant Freddie Murray:

Harold K. Tummel  
Texas Bar No. 20286675  
Lydia Casso Tummel  
Texas Bar No. 00791830  
Tummel & Casso  
4430 South McColl Road  
Edinburg, Texas 78539  
(956) 664-2222  
(956) 664-0522 (Fax)

**INDEX OF DOCUMENTS ATTACHED**

- Exhibit A Copy of the Docket Sheet for Cause No. P-34,582-A in the Probate Court of Hidalgo County, Texas;
- Exhibit B Pleadings in Cause No. P-34,582-A in the Probate Court of Hidalgo County, Texas;
- B-1 Plaintiff's First Amended Petition, filed October 23, 2013;
- B-2 Citation issued on Lilia Murray, issued November 1, 2013;
- B-3 Order Setting Hearing on Application for Temporary Administration, signed January 20, 2014;
- B-4 Citation executed on Lilia Murray, executed January 27, 2014, filed February 6, 2014;
- B-5 Order of Dismissal for Want of Prosecution, signed March 12, 2014; and
- B-6 Order Granting Temporary Administration Pending a Will Contest and Appointing a Temporary Administrator Pending a Will Contest, signed March 25, 2014.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of August, 2014, a true and correct copy of the foregoing was served via regular U.S. mail on the following counsel:

Antonio Martinez, Jr.  
409 W. Nolana Ave, Ste 4  
McAllen, Texas 78504

Aurelio Leo Lara  
4124 N. 23<sup>rd</sup> Street, Suite 1  
McAllen, Texas 78504

*Attorneys for Lilia Murray*

Harold K. Tummel  
Lydia Casso Tummel  
Tummel & Casso  
4430 South McColl Road  
Edinburg, Texas 78539  
*Attorneys for Freddie Murray*

/s/ Dustin C. George  
**DUSTIN C. GEORGE**